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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. DAVID PAUL WILLIAMS, Appellant.	2 CA-CR 2008-0300 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20080018

Honorable Robert Duber, II, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Julie A. Done — Phoenix
Attorneys for Appellee

Emily Danies — Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Appellant David Williams was convicted of misconduct involving a weapon, and the trial court sentenced him to an aggravated term of five years' imprisonment.[1] He argues the trial court erred when it denied his motion to suppress evidence and his motion for new trial. Finding no error, we affirm.

CONFLICT OF INTEREST

¶2 After the jury rendered its verdicts, Williams filed a pro se motion for "mistrial," asserting his trial counsel had a conflict of interest in representing him. In its ruling on the motion, the trial court also referred to it as a motion for a mistrial. Both parties now assert the court treated it as a motion for new trial pursuant to Rule 24.1, Ariz. R. Crim. P. Because the rules provide for no other postverdict motion to address this claim, *see, e.g.*, Rule 24.2(a) (motion to vacate judgment filed after judgment and sentence), we also treat it as such.[2] *See* Ariz. R. Crim. P. 24.1(c)(5) (defendant entitled to new trial when he has not received fair, impartial trial through no fault of his own); *see also State v. Soule*, 164

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[1]Williams was found not guilty of theft.

[2]Arizona law suggests other appropriate avenues for such a claim are a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., *see State v. Hursey*, 176 Ariz. 330, 332-33, 861 P.2d 615, 617-18 (1993), and a state bar complaint against the attorney with the alleged conflict. *See In re Ockrassa*, 165 Ariz. 576, 576-77, 799 P.2d 1350, 1350-51 (1990). But Williams's pro se motion for mistrial, filed after the verdict but before sentencing, clearly falls outside either of those avenues of potential relief. *See* Ariz. R. Crim. P. 32.4(a) (notice of post-conviction relief filed after entry of judgment and sentence); Ariz. R. Sup. Ct. 54(a) (disciplinary proceedings for violation of ethical rule commenced when state bar receives complaint against attorney).

Ariz. 165, 169-70, 791 P.2d 1048, 1052-53 (App. 1989) (addressing conflict-of-interest claim made in motion for new trial).

¶3 Williams argues the trial court erred when it denied his motion for new trial. But his posttrial motion was filed untimely, and the court thus had no jurisdiction to decide it. *See* Ariz. R. Crim. P. 24.1(b) ("A motion for a new trial shall be made no later than 10 days after the verdict has been rendered."); *State v. Wagstaff*, 161 Ariz. 66, 70-71, 775 P.2d 1130, 1134-35 (App. 1988) (time limit jurisdictional; motions for new trial filed outside limit "have no effect"). The jury rendered its verdicts on June 5, 2008. Thus, the ten-day period within which to file a motion for new trial began on June 6, 2008, and ended on June 16, 2008. *See* Ariz. R. Crim. P. 1.3(a), 24.1(b). Williams filed his first of several motions for new trial on June 19, 2008, the third day after the deadline to file a motion for new trial had passed. Because the court did not have jurisdiction to decide the motion, we do not address the issue on appeal. *See Wagstaff*, 161 Ariz. at 70-71, 775 P.2d at 1134-35; *accord State v. Hickle*, 129 Ariz. 330, 332, 631 P.2d 112, 114 (1981).

MOTION TO SUPPRESS

¶4 In reviewing the denial of a motion to suppress evidence, we consider only the facts presented at the suppression hearing, viewing them in the light most favorable to sustaining the trial court's ruling. *State v. Wyman*, 197 Ariz. 10, ¶ 2, 3 P.3d 392, 394 (App. 2000). Globe police officers James Durnan and Gabriel Guerrero were on duty in Guerrero's patrol vehicle conducting an investigation. The officers observed a pickup truck with a

cracked windshield and conducted a traffic stop on the truck. The officers described it as "a fairly significant crack" that spanned the whole length and width of the windshield.

¶5 Durnan determined that the passenger of the truck was Williams and the driver was a woman named Jennifer G. Neither Jennifer nor Williams possessed a valid driver's license, and Durnan testified that police department policy required the officers under those circumstances to "conduct a vehicle inventory" and have the vehicle towed from the scene. Asked to get out of the truck, Williams stood near the vehicle while officer Danny Rice performed the inventory.

¶6 While Williams was standing near the vehicle, he and Durnan "conversed . . . [about] various topics." Durnan described Williams's demeanor during this encounter as "friendly and talkative." He testified Williams was free to leave at this time. It appeared to Guerrero that Williams stayed at the scene because of his interest in the truck, which Williams told the officers he had been planning to purchase. Rice also testified Williams seemed "kind of upset about the truck being towed because he had just spent some money on some wheels and tires for it." Williams admitted no one had told him he had to stay, but he testified he had not felt he was "allowed to leave" the scene.

¶7 When Rice found a gun behind the front seat of the truck, Guerrero retrieved it and asked Jennifer and Williams if the gun belonged to either of them. Williams denied knowing anything about the gun. Because Guerrero had information that Williams potentially was involved in "dealing in firearms," Rice informed Williams of his

constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). After being read the *Miranda* warnings, Williams indicated that he understood his rights.

¶8 Durnan testified that, after he "advised [Williams] to tell the truth," Williams said he had purchased the gun for $40 and was going to try to resell it for $200. Williams also conceded the blanket wrapped around the gun belonged to him. Guerrero testified Williams told the officers "that he has to hustle to get money any way that he can" to support his children and grandchildren. Williams was arrested for weapons misconduct.

¶9 Williams argues the trial court erred in denying his motion to suppress evidence because his statements to the police officers were involuntary and made in violation of *Miranda*.[3] We review for an abuse of discretion a trial court's denial of a motion to suppress evidence. *State v. Szpyrka*, 220 Ariz. 59, ¶ 2, 202 P.3d 524, 526 (App. 2008). Although we defer to the court's factual findings, we review de novo its ultimate legal conclusions. *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004).

¶10 The trial court denied Williams's motion to suppress his statements to the officers, in part, because it found the statements had been voluntary—that Williams's will had not been overborne and his statements had not been "the result of coercion or promises." We review a trial court's determination that a confession is voluntary for "clear and manifest

[3]Although Williams asserts "the stop was made purely as a pretext," he also concedes that "there was a crack of some sort on the windshield" and that "the case law is clear that the police can stop a vehicle with a cracked windshield for further investigation." Thus, we address this argument no further.

error." *State v. Amaya-Ruiz*, 166 Ariz. 152, 164, 800 P.2d 1260, 1272 (1990). The court examines the totality of the circumstances surrounding a confession to ensure it was made voluntarily and is "not the product of physical or psychological coercion." *State v. LaGrand*, 153 Ariz. 21, 26, 734 P.2d 563, 568 (1987). The state has made a prima facie case for the admission of a confession when an officer testifies it was "'obtained without threat, coercion or promises of immunity or a lesser penalty.'" *State v. Ellison*, 213 Ariz. 116, ¶ 31, 140 P.3d 899, 910-11 (2006), *quoting State v. Jerousek*, 121 Ariz. 420, 424, 590 P.2d 1366, 1370 (1979).

¶11 Here, the officers testified, and Williams conceded, no officers had drawn their weapons and no physical force or "any loud directives" had been used in dealing with him. Durnan testified Williams's demeanor throughout the entire encounter was "[v]ery, very friendly and cooperative," while Guerrero described Williams as "calm, cool and collected." Guerrero testified neither he nor any other officer made any promises to Williams, and Durnan stated Williams gave him the information about the gun without being threatened.

¶12 Williams emphasizes he and Durnan discussed Williams's "working off the charges," which he characterizes as an attempt by Durnan "to induce Mr. Williams to make statements to incriminate himself." But Durnan testified any such discussion would have been brief because Williams told Durnan he was on probation. Durnan then told Williams that "working off the charges" is not an option for probationers. Moreover, the record suggests Williams might have been the one who initiated any discussion about working off

charges. Because the trial court reasonably could have found that discussion had not induced Williams to make an inculpatory statement about the gun, we find no error in the court's conclusion that Williams's statements were voluntary.

¶13 Williams also suggests he was in custody before he was read the *Miranda* warnings and, thus, his statements to the officers about the gun were obtained in violation of his Fifth Amendment rights. But Durnan and Guerrero testified Williams had been free to leave the scene before being read the *Miranda* warnings and, indeed, Williams conceded he had not been told he had to remain. Moreover, the state presented evidence that Williams had expressed an interest in the truck that was being towed, which provided a reason for him to remain at the scene after the traffic stop had essentially ended. Finally, Durnan and Guerrero testified Williams had made the statements about the gun after the officers had read him the *Miranda* advisory.

¶14 Although Williams testified he had not been free to leave and had made incriminating statements before he was read the *Miranda* warnings, the trial court was entitled to credit the officers' testimony on both points. *See State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007) (we defer to trial court's determination of witness credibility on motion to suppress). The court did not err when it implicitly concluded Williams had admitted his ownership of the weapon after officers had advised him of his rights under *Miranda*.

¶15 For the foregoing reasons, we find no abuse of discretion in the trial court's denial of Williams's motion to suppress evidence. His conviction and sentence are affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge